

Stobbe, Chad [DNR]

From: Sherman Lundy [sherml@bmcaggregates.com]
Sent: Monday, July 28, 2008 3:54 PM
Subject: Stobbe, Chad [DNR]
Re: Notice of Proposed Amendments to Iowa Administrative Code 567 Chapter 108

Stobbe, Chad [DNR] wrote:

> Sherman - Per your request, I've attached a copy of the current IAC 567 Chapter 103. Matt McDonald and I visited your facility a couple months back and discussed this proposed rulemaking. With the flooding, it pushed our timeframe back a little, but we've finally got a draft out there for review.

>

> Chad A. Stobbe, Environmental Specialist Senior Iowa Department of

> Natural Resources Land Quality Bureau

> 502 East 9th Street

> Des Moines, IA 50319-0034

> Phone: (515) 242-5851

> Fax: (515) 281-8895

> "Leading Iowans in caring for our natural resources"

>

> -----Original Message-----

> From: Sherman Lundy [mailto:sherml@bmcaggregates.com]

> Sent: Tuesday, July 22, 2008 7:38 AM

> To: Stobbe, Chad [DNR]

> Subject: Re: Notice of Proposed Amendments to Iowa Administrative Code

> 567 Chapter 108

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> Stobbe, Chad [DNR] wrote:

>

>> Dear Stakeholder -

The Iowa Department of Natural Resources is seeking feedback

>> regarding proposed amendments to IAC 567 Chapter 108, titled

>> "Beneficial Use

>> Determinations: Solid By-Products As Resources And Alternative Cover

>> Material". The department is providing stakeholders with the

>> opportunity to provide comments on the proposed amendments prior to

>> initiating the formal rulemaking process. The department anticipates

>> presenting the proposed rule as an informational item to the

>> Environmental Protection Commission in October.

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>> Please take a minute of your time to review the proposed amendments

>> to IAC 567 Chapter 108 and provide the department with written

>> suggestions or comments. In an effort to ensure that all potentially

>> affected parties receive a copy of the proposed amendments for review

>> and comment, the department will follow this e-mail with a mailing

>> next week. Please feel free to forward this e-mail to anyone who

>> might have been missed.

>>

>> Thank you in advance for your time and please feel free to contact me

>> with any questions.

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>> Chad A. Stobbe, Environmental Specialist Senior

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>> Iowa Department of Natural Resources

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>> Land Quality Bureau

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>>
> Chad: Thanks for the information; I do have several concerns regarding
> the requirements for the "beneficial fill," Coal Combustion Products
> as these proposed rules impact quarry reclamation however, I would
> like to have a copy of the Iowa Code 567, Chapter 103, to review prior
> to any comments on these proposed rule changes. I would appreciate
> your assistance in forwarding a copy of that part of the Code to me.

>
> Sherman Lundy]
> BMC Aggregates
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Chad: Printed below are some comments BMC has generated after reviewing the documents you sent to me. Thank you very much for the update and keeping us informed. Please review these concerns and I would appreciate a meeting with your staff to discuss some of our concerns ahead of the August 8th or August 22 meeting.

Sherman Lundy

To: Chad Stobbe

IDNR, Solid Waste Division

From: Sherman Lundy

BMC Aggregates

Date: 7/28/08

Subject: Proposed Changes to IAC 567-108 pertaining to Beneficial Use Determinations,

dated July 17, 2008.

After reviewing the proposed changes and recommendations in the proposed amendments to 567-108, we are initially submitting the following comments, concerns, and suggestions.

1. BMC Aggregates operates a Beneficial Fill Site for Coal Combustion Products and John Deere Foundry Sand Products at our Waterloo South Quarry. All of the proper documents were submitted to the IDNR for the approval of these materials as Beneficial Fill for the purposes of Quarry Reclamation. Operating within the approval guidelines, BMC Aggregates has complied with DNR Permitted Rules for Beneficial Fill in utilizing this material for eventual quarry reclamation at this location. All of the testing, including the SPLP procedures for the heavy metals are conducted on the materials accepted as beneficial fill in accordance with the guidelines established by IDNR in the former Beneficial Fill Section of the Code. In addition, all of the parameters for groundwater limitations, handling procedures, and onsite controls have been implemented at this Site.

2. The new amendments or proposal eliminates the concept of Beneficial Fill, in this case Quarry Reclamation, with a sentence in 567-108.6:
"While the use of solid by-products for fill can provide benefits, such fill projects are not beneficial use projects." This is the first concern with the proposed amendments! Quarry Reclamation is a very important benefit to the community and that statement is a very arbitrary and negative approach to utilizing what has been a disposal problem in the past to a beneficial and productive use in the future.

3. The Coal Combustion Residue or Products utilized as Beneficial Fill at our site have been regularly tested in accordance with the EPA Guidelines and have not been found to be Hazardous Waste. However, the proposal for eliminating beneficial sites and treating such sites as Landfills, more specifically monofills with added regulations such as post closure care and ERRAP Guidelines far exceeds any reasonable requirements for these non hazardous materials. In effect, there is no documentation of any contamination of surface or groundwater with migration of harmful materials or metallic ions from any of the beneficial fill sites located in Iowa.

4. Quarry reclamation is greatly benefited by the acceptance of Beneficial Fill materials including Coal Combustion Residues. We are currently implementing a number of the directives found in the 567-103, Sanitary Landfills: Coal Combustion Residue; we believe with a minimal modification we can continue to provide an environmentally safe location for the Residues while reclaiming quarry areas within the regulatory guidelines established in this part of the Code.

However, the Chapter

3 appears to be oriented towards a landfill development not a generalize quarry reclamation effort. Having spent 15 years as the County Commissioner for Des Moines County, on the Southeast Iowa Regional Solid Waste Commission, I believe I have some experience in distinguishing between rules established for the development of a traditional landfill vs., the reclamation of a quarry.

5. Prior to any additional rule making or modifications I am requesting a meeting with the DNR Solid Waste Management Staff to discuss the Quarry Reclamation issue as a beneficial fill project within the framework of 567-108, and 567-103. We have no problems with monitoring groundwater for the presence of the ions listed, however there are several concerns with the "post closure," as it is now written and how that applies to reclaimed quarry areas.

6. From the information presented, it appears the DNR effort has been directed toward use of formerly beneficial fill materials as cover along with the use of beneficial fill material (coal combustion residues in our case) as quarry reclamation, summarily dismissing quarry reclamation by placing this concept into the monofill category. There is no evidence of any field or data collection efforts for any indepth investigation of these issues. This appears to be a reaction to accusations rather than any scientific data collection in Iowa; further this appears to be the development or rewrite of the rules by a Regulatory Agency without input along the way from the businesses or operators involved in the actual beneficial process. In addition there is a rather hurried time table to put these amendments or rules in place without assessing the actual need for some of the more stringent impacts of Sanitary Landfills under the assumption "one size fits all."

7. Another question related to this process is the statement in the newly proposed revisions, 567-108.6 (455B,455D), "Existing projects....shall be brought into compliance in accordance with the applicable sanitary rules...." Does this mean some type of modification of the existing permit, or redoing existing permits and how does this relate to the idea of a comprehensive plan?

For the reasons listed above and others I believe a face to face meeting would be time well spent to address these concerns, protecting the environment while using these materials as a beneficial fill for quarry reclamation. Perhaps the idea should be reclamation projects if the term beneficial fill is of concern.

Gnerman Lundy

BMC Aggregates

101 BMC Drive

Elk Run Heights, IA 50707

319 235 6583

BMC Aggregates

The meeting yesterday afternoon with IDNR Solid Waste was quasi productive. For whatever reason, they want to eliminate the beneficial fill [567-108.6] concept in favor of the Monofill regulations stated in Chpt 103 of the Iowa Code.

They have or are in the process of eliminating the Comprehensive Plan portion of this Chpt which makes it less offensive however there are other considerations which were discussed.

Problem areas:

a. They have not as of this meeting "grandfathered," in the existing beneficial fill sites; Alex Moon suggested to us (myself and a representative from Wendling Quarries who is working with ADM on a monofill site) they would remove the "siting," requirement from existing monofill sites this session of the legislature. The siting requirement would mandate any future monofill locations for CCR (coal combustion residue) to be sited. Siting is in effect, a public hearing with approvals from the County Health Department and the Board of Supervisors with possible a rezoning scenario.

b. Chpt 103 is labeled a "Sanitary Landfill: Coal Combustion Residue. Our argument is these are beneficial sites for reclamation purposes, not simply creating monofill sites for CCR or any other product. Alex issued the statement this is disposal not reclamation. Obviously we have a problem with semantics. We suggested they reconsider Chpt 103 as simply Industrial Monofill or Reclamation: CCR. We explained to them the public perception of a landfill is detrimental to any public consideration.

c. IDNR is mandating under Chpt 103, some type of ongoing monitoring system for water quality be established for the monofill. Also following the closure of the facility as a monofill some type of assurance bond must be in place for a 10 year period to insure the continuation of the monitoring effort and any corrective measure for dealing with problems which might arise from the monofill materials.

d. In addition, Chpt 103 also requires a liner system of at least 2' of clay in the floor of the site which is really not a problem, however, Alex Moon indicated he would require a plastic liner which we seriously questioned.

e. Some of the requirements in Chpt 103 have been or are in part in place for the BMC site at South Quarry. We have submitted the plan initially showing how the material would be handled [wetted for placement], topo maps of the area, aerial photos, roadways and the protection from surface runoff. However, we have only our Water Quality monitoring system which needs to be expanded for Chpt 103.

f. IDNR has not identified CCR as a hazardous waste material. The SPLP testing for the heavy metals has been brought into question by the Sierra Club however the other types of related testing of the metals has not produced a problem with excessive metal concentrations in the ash products. Alex did bring up the issues with sulfates however the problem here is the sulfates can be a natural ingredient in groundwater.

g. There is a concern from our perspective regarding the lack of understanding by the rule makers of general chemistry (the material in a limestone quarry is in an alkali environment where metallic migration or dissolution is minimal as opposed to an acid environment where some solubility could occur) and hydrogeological concepts regarding transmissivity.

h. The Emergency response and remedial action plans in Chpt 103.2(4) according to the IDNR Solid Waste Personnel can be limited to only the immediate concerns under this heading at each permitted location and the remainder can be classified as non applicable.

i. The post closure section is the most cumbersome and awkward of the provisions. If and when the 567-108.6, is replaced by the 567-103, there are some serious issues which need to be readdressed and reevaluated.

103.1(5) IDNR will apparently only issue a 10 year permit with the possibility the permit can be renewed for another term. Apparently the total permit time at best is for two-10 year terms for a total of 20 years. The quarry reclamation sites using CCR or similar products are really confined to a 10 year term with the hope of an extension for another 10 years.

103.3, The post closure procedure appears simple enough and reasonable however there are several issues especially the problem of post closure assurance rules which appear to be cumbersome and potentially very expensive with several unknowns. This post closure requires the hiring of a third party and Licensed engineer to devise a post closure plan and the costs for this post closure plan including the 10 year post closure monitoring program. In 103.1(5) no mention is made for the need of a third party to develop this plan. Further, if the site is only permitted for 10 years with the possibility of another 10 year term, this means a post closure plan would have to be for 10 years and also for 20 years along with the funding source and funding assurance for each of those situations.

In effect, under the post closure section there are several concerns. The first is an unrealistic term scenario for taking the CCR and other products for reclamation. Most of the generators of ash are looking for long term sites for the ash. At the BMC South facility we are planning for the 20-40 year reclamation effort not a 10 year or maximum of 20 years. The terms of the permit need to be extended for a minimum of 20 years with the additional option for another 20 years for the beneficial fill/monofill sites. The costs for implementing a beneficial fill location under the terms of Chpt 103, will be very expensive and a recovery time of 10 years is not enough time to recover the investment and the post closure costs.

Secondly, we will be required to hire a third party engineer to provide a closure plan, a monitoring plan, and seek some type of financial assurance bonding for monitoring/maintaining the site after we have finish. Given the location at a quarry site (and this could be different for other proposed areas), such considerations regarding the final cover for the filled area are not difficult to determine and the monitoring plan which was in place during the life of the monofill operation would still be viable water quality monitoring locations. A possible option for monitoring could be a contract with a reputable firm for the decade of monitoring as part of the post closure plan. For water quality monitoring a contract for a definitive period of time along with suitable reporting can be negotiated. In regards to a post closure bond or financial assurance a contractor could certainly provide an estimate for final cover and ultimate reseeding for the site which could be filed along with an assurance bond to cover that cost if the operator of the site did not address the closure. There should be an option for the Company to propose a monitoring and post closure plan for IDNR to review instead of the reliance solely on a third party

Again, language does make a difference. A very definite concern is the section is so written as to consider the materials used for reclamation as Sanitary Landfill rather than beneficial fill. This Chapter needs to be considered as Industrial Monofill and Reclamation rather than Sanitary Landfill. We are not in the Sanitary Landfill business. Also,

Multiple liner system, especially a clay liner with a plastic liner above that layer are not necessary given the inert character of the material current being used for beneficial fill at the BMC location., A clay liner would be more than adequate to address any transmissivity concerns.



Sherman Lundy
Geologist
Property & Project Development

BMC Aggregates L.C.

101 BMC Drive, Elk Run Heights, IA 50707

Office: (319) 235-6583 Toll-Free: (877) 540-ROCK
Mobile: (319) 759-5803 sherml@bmcaggregates.com
Fax: (319) 235-7065 www.bmcaggregates.com

567-108.6

Proposed Rewrite

Develop a special category for the use of Coal Combustion Products or other similar materials which are not hazardous materials under this section, keeping the existing 567-108.6 a-g listing under this section with the following modification.

Solid by products used beneficially as fill for ravines, quarries, and other possible reclamation projects shall have the following additional requirements:

1. Reclamation Projects are for the purpose of reclaiming lands previously used as quarries, ravines, or other possible fill projects approved by the administering department and meeting the conditions set forth in this section of the code.
2. Reclamation sites requirements shall include the provisions of IAC 567-103.1(1).
3. Permit Application form shall include proof of ownership or permission of land owner to complete reclamation using the Coal Combustion Products for beneficial fill.
4. A topographic map shall accompany the Permit Application showing the location of the site and any structure or other pertinent features.
5. Permit Application will contain the test results from neighboring wells in the area as a base of information for groundwater quality including the establishment of monitoring wells or monitoring sites for surface and groundwater approved by this agency for the metals described in IAC 567-108.5 (455B, 455D). Such monitoring will take place quarterly with the results sent to the IDNR Solid Waste Division. Quarterly monitoring may be reduced to semi annual monitoring if the test results do not indicate the presence of these metals in concentrations which exceed IDNR standards.
6. As part of the design for this reclamation project, the reclamation project shall demonstrate a design compatible with IAC 567-103.1(3).
7. As part of the operation, the design and the application will show the location of the area to be reclaimed with appropriate aerial photos, drawings, and topographic map of the site.
8. As part of the operation, a description of how the coal combustion products will be handled when brought on site and treated to control fugitive dust after placement in the reclamation area shall be included within the design and permit application.

9. A final closure to the reclaimed site including the placement of soil cover for ultimate reseeding and monitoring proposal shall be included in the operational design of the reclamation project.

Such reclamation projects are not to be considered landfills and should be distinguished as monofill reclamation sites for coal combustion products or similar inert materials. These materials are used for the purpose of reclaiming areas to return these areas to other productive uses for the future.